BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

The opinion of the United States Emergency Court of Appeals is unreported. (R. 184).

II

Statement of the Case

The relevant record facts and the facts with regard to the jurisdiction of this Court are both stated in the petition.

III

Specification of Errors

The errors which your Petitioner will urge if the Writ of Certiorari is allowed are that the United States Emergency Court of Appeals erred,

1. In that it decided and upheld the validity of Maximum Price Regulation 169 as amended and revised.

2. That the Price Administrator could legally force Petitioner, or any other person similarly situated, to sell its product at a loss.

3. That the pertinent provisions of General Maximum Price Regulation 169, with respect to alleged favoritism shown to hotel and restaurant supply houses, are legal and valid. The summary of argument embraces the errors herein set forth.

IV

Argument

Petitioner has offered and produced uncontradicted evidence that it cannot slaughter cattle, except at a loss. In support of this statement, it submitted figures for a one-year period from November, 1942 to October, 1943 (R. 101), showing that its average dressed beef cost for this period was 24.8¢ per pound. In this same period the ceiling prices, as fixed by Maximum Price Regulation 169 ranged from 13¼¢ per pound for the cheapest type of meat to 21¢ per pound for the choice grade. It was therefore obvious to the Administrator and to the Court below that every pound of beef that was slaughtered was done so at a loss. The Emergency Court, however, justified this practice in the case of *Armour & Company, an Illinois corporation*, v. *Chester Bowles, Price Administrator*, decided on March 29, 1945 and not reported, on the theory that Armour & Company's fresh beef losses were more than made up by Armour from processing and manufacturing operations, and that Armour was a representative packer.

The Court, in adopting this theory, upheld to some extent the contention of the Office of Price Administration that packers historically lost money on beef, but that their overall operations enabled them to operate generally at a profit. However, the Court, in another decision rendered on the same day, *Edward Heinz, et al.* v. *Chester Bowles, Price Administrator*, set aside MPR 169 and negated OPA's theory of historical losses on carcass beef insofar as it applied to non-processing slaughterers.

The *Armour* and *Heinz* cases create an irreconcilable conflict. Armour can in no case be considered as "a representative packer." Its operations are multitudinous in

nature, and a great portion of its by-products are foreign to the average meat packer. The efficiency of operation credited to a packer like Armour is not a fair standard for the industry as a whole. The norm is therefore manifestly unfair and should be set aside.

Petitioner has offered proof, which has not been denied, that the markup allowed to hotel and restaurant supply houses under the regulation is disproportionate to the actual cost. The effect has been to increase the price of livestock for the reason that packers having hotel and restaurant supply departments are able to pay the highest prices for livestock and still operate at a profit. This fact is well known in the industry but was discarded by the Emergency Court of Appeals.

Maximum Price Regulation 169 limited any slaughterer from going into the hotel and restaurant supply business unless he was so engaged in a base period fixed by the regulation. Petitioner has contended that such a restriction was arbitrary and capricious. The Emergency Court of Appeals made no ruling on this point, because it decided that it had no jurisdiction to pass upon this particular objection, and that it was limited to review of regulations and orders issued under paragraph 2 of the Act. We believe that the Court was incorrect in its conclusion. The Act reads, inter alia, as follows:

> "Upon the filing of such complaint the Court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding."

This particular limitation was part of the regulation and the Court had jurisdiction to pass upon its validity.

V

Conclusion

For the reasons heretofore assigned, it is respectfully submitted that this case is one which justifies the issuance of a Writ of Certiorari.

Respectfully submitted,

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